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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,563	10/15/2001	Kenneth Gerald Dextras		1451

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EXAMINER

GLESSNER, BRIAN E

ART UNIT PAPER NUMBER

3635

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,563

Applicant(s)

DEXTRAS, KENNETH GERALD

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The following office action is in response to the response filed by applicant on 9/10/02.

Claim Rejections - 35 USC § 112

1. Claims 1-5 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited. The scope of applicant's claims 1 and 2 is vague and indefinite due to the functional language. The applicant claims an improvement, but does not clearly distinguish what the improvement is or where it begins in the claims. Appropriate correction is required. Since the claims are vague and indefinite, the examiner will examine the claims as "best understood" until further correction and clarification is provided.

2. Claim 1 recites the limitation "the stud spaces" in line 3. There is insufficient antecedent basis for this limitation in the claim.
3. Claim 1 recites the limitation "the living space" in line 6. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 2 recites the limitation "the stud spaces" in line 4. There is insufficient antecedent basis for this limitation in the claim.
5. Claim 2 recites the limitation "the living space" in line 7. There is insufficient antecedent basis for this limitation in the claim.

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The examiner has listed a few of the 112, second paragraph errors in the claims.

However, there are additional errors that need correction.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuno JP 361128047A in view of Tucker, Sr. (3,223,018).

In regard to claims 1 and 2, as “best understood”, Masuno discloses an improvement in a system to control moisture in an exterior load bearing wall construction, wherein the wall has a cavity, comprising moisture/humidity probes 13 installed in the wall such that if the moisture in the framing members or the humidity in the air in the cavity exceeds predetermined values the moisture humidity control mechanism actuates a fan 12 that circulates the air from within the cavity to the outside of the building by means of exhaust ports 11 connected to the exterior wall portion, the fan continues to operate until such time as the predetermined values are reached and upon reaching the limits, the mechanism shuts off the fan. Masuno does not specifically disclose that the wall contains studs or perforated upper and lower plates. Tucker teaches that it is known to provide ventilated walls that have studs 13 and perforated upper and lower plates 8, 14 to facilitate the ventilation of said walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Tucker’s studs and plates into Masuno’s

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invention, because the perforated plates and studs will allow the fan to ventilate the walls in a more efficient manner.

8. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuno JP 361128047A in view of Tucker, Sr. (3,223,018) and further in view of Goldsmith (5,988,264).

In regard to claims 3-5, as “best understood”, Masuno in view of Tucker disclose the basic claimed invention except for specifically disclosing the use of insulation and insulation spacers in the cavity or that the humidity control mechanism contains a manual override to enable operation independent of the probes. Goldsmith teaches the use of ventilated walls having the above elements, column 4, lines 43-47 and column 7, lines 47-48. The examiner contends that it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the insulation and control means into Masuno in view of Tucker’s invention, because, with respect to the insulation, the examiner takes the position that insulation in wall cavities is notoriously well known. The insulation will help to maintain the temperature within the interior of the building. In regard to the control means, the examiner contends that it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said control means into Masuno in view of Tucker’s invention, because the manual operation will allow the user to have control of the system if they would desire. Therefore, if the system were to malfunction, the user would be capable of shutting it off.

Response to Arguments

9. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Larimore, Hoff, Carpenter, and Iwai.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031.

The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G.
November 1, 2002



BRIAN E. GLESSNER
PATENT EXAMINER